IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1771 OF 2005
IN
WRIT PETITION NO.7263 OF 2002
WITH
WRIT PETITION NO.3703 OF 2006

Kalavati Revansiddha Patil
since deceased through her L.Rs.
Basavraj G. Nawale & Anr. ..Applicants

V/s.

Someshankar G. Algundi & Ors. ..Opponents.
(Org.Respondents)

Mr.Tejas Deshmukh i/b. Mr.A.A.Kumbhakoni for applicants.

Mr.G.S.Godbole for Respondents.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 2, 2007.

P.C. :

1. Although prayer for condonation of delay is opposed by the counsel for the opponents, for the reasons mentioned in the additional affidavit dated 18th June, 2007 being sufficient cause, in the interest of justice, delay in taking out present civil application is condoned.

2. Heard counsel for the parties on the merits of the present application.

3. It is not a case for review of the order. The grievance however, can be remedied by correcting the record, as is rightly pointed out by the counsel appearing for the parties by giving correct description of Gurulingappa Rachappa Algundgi as the original Judgment Debtor No.1 and Bhangarawa Keshatti as the original plaintiff(decree holder). The clerical errors, which have occurred in paragraphs on page No.2 and 3 of the order will have to be corrected, which will read thus:

> ". The Short question involved in this petition is that, the petitioners being heirs and legal representatives of the original Judgment Debtor No.1 Gurulingappa Rachappa Algundgi are not entitled to proceed with the execution proceedings with or without Will in favour of the Petitioner No.1 or Petitioner No.2, as the case may be.
>
> . It is seen from records that Bhangarawa Keshatti had filed a suit against Gurulingappa Algundgi which came to be decreed. That decree has become final. The original decree holder, predecessor of Respondent instituted execution proceedings. However, while proceedings were pending, original Judgment Debtor No.1 died. In the circumstances, petitioner No.2 filed an application that she was entitled to succeed in view of the Will executed in her favour by the original Judgment Debtor No.1. However, in due course of time, purported Will in favour of the Petitioner No.2 was misplaced and could not be produced and proved before Executing Court. Latter on Petitioners filed joint application before the Executing Court to permit them to be substituted in place of original Judgment Debtor No.1. In this application it is stated that they have come

> across another Will executed by Gurulingappa in favour of Petitioner No.1 and, Petitioner No.1 being his son was the natural heir of the original Judgment Debtor No.1. There was no other legal heir besides the Petitioners. In the circumstances, it was that, therefore, application Exh.109 be allowed. However, by the impugned order dated 1.9.1998, the 2nd Jt.C.J.S.D. Solapur was pleased to reject that application Exh.109, filed in Regular Darkhast No.148 of 1970 on the specious ground that the application is filed only to delay the proceedings.
>
> . Having gone through the records with the assistance of the counsel appearing for the petitioner, I find no basis to sustain the said reasoning given by the Lower Court. To my mind the Lower Court has clearly over-looked that the petitioner No.1 is the son of original Judgment Debtor No.2 and in that capacity was the natural heir to succeed to the estate of original Judgment Debtor No.1. Besides, the petitioners assert that there is Will in favour of Petitioner No.1. Be that as it may, no other person has come forward to claim the estate of original Judgment Debtor No.1 and Petitioners being the natural heirs were entitled to succeed on the application filed at Exh. 109. Accordingly the impugned judgment and order is set aside and the application Exh.109 is allowed. Execution court to proceed with the matter in accordance with law. Petition disposed of. No order as to costs."

4. Final order which has been passed on the Writ Petition dated July 8, 2003, however, remains unchanged, namely the order passed by the lower Court will stand set aside and application preferred by the petitioner Exh.109 is allowed. Ordered accordingly.

5. Office to issue fresh copy of the order dated

July 8, 2003, after incorporating the above said corrections, if applied.

6. Counsel for the petitioner in Writ Petition No.3703 of 2006 fairly states that in view of the order passed today in Civil Application No.1771 of 2005, nothing survives for consideration in the present Writ Petition. Hence the same is disposed of as not pressed.